DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9890]

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Regulations Relating to Withholding and Reporting Tax on Certain U.S. Source Income Paid to Foreign Persons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance on certain due diligence and reporting rules applicable to persons making certain U.S. source payments to foreign persons, and guidance on certain aspects of reporting by foreign financial institutions on U.S. accounts. The final regulations affect persons making certain U.S.-related payments to certain foreign persons and foreign financial institutions reporting certain U.S. accounts.

DATES:

Effective date. These regulations are effective on January 2, 2020.

Applicability date. For dates of applicability, see §§ 1.1441–1(f)(1) and (3), 1.1441–2(f)(2), 1.1441–6(i)(1) and (3), 1.1441–7(g), 1.1471–4(j)(2), and 1.6049–6(e).

FOR FURTHER INFORMATION CONTACT: John Sweeney at (202) 317–6942 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2017, the Department of the Treasury (Treasury Department) and the IRS published final and temporary regulations (the chapter 3 temporary regulations) under chapter 3 of subtitle A of the Internal Revenue Code (the Code) and chapter 61 of subtitle F of the Code (TD 9808) in the **Federal Register** (82 FR 2046, as corrected at 82 FR 29719). On the same date, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–134247–16) in the **Federal Register** (82 FR 1645, as corrected at 82 FR 43314 and 82 FR 49549) cross-referencing the temporary regulations (the chapter 3 proposed regulations). Also on January 6, 2017, the Treasury Department and the IRS published final and temporary regulations (the chapter 4 temporary regulations) under chapter 4 of subtitle A of the Code (TD 9809) in the **Federal Register** (82 FR 2124, as corrected at 82 FR 27928). On the same date, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–103477–14) in the **Federal Register** (82 FR 1629, as corrected at 82 FR 43314) that cross-referenced the temporary regulations and included other proposed regulations.[1] The proposed regulations cross-referencing the chapter 4 temporary regulations (redesignated as REG–132857–17) are referred to in this preamble as the chapter 4 proposed regulations.

On September 25, 2017, the Treasury Department and the IRS issued Notice 2017–46, 2017–41 I.R.B. 275, and on March 5, 2018, the Treasury Department and the IRS issued Notice 2018–20, 2018–12 I.R.B. 444. These notices provide that the Treasury Department and the IRS intend to amend certain provisions in the chapter 3 temporary regulations to narrow the scope of certain documentation requirements and provide a phase-in for implementation of those rules in response to comments. Notices 2017–46 and 2018–20 provide that taxpayers may rely on the guidance provided in these notices until they are incorporated into final regulations. These notices are further described in Part I of the Summary of Comments and Explanation of Revisions section of this preamble.

On December 18, 2018, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–132881–17) in the **Federal Register** (83 FR 64757) that proposed amendments to the regulations under chapters 3 and 4 to reduce burden under those regulations (the 2018 proposed regulations). The 2018 proposed regulations respond to Executive Orders 13777 and 13789, which instructed the Secretary of the Treasury to reduce regulatory burdens on taxpayers. The 2018 proposed regulations proposed modifications to certain provisions that are also in the chapter 3 temporary regulations and the chapter 4 temporary regulations. Certain of the proposed modifications relate to the requirement that a withholding certificate or treaty statement provided with documentary evidence by a treaty claimant that is an entity identify the applicable limitation on benefits provision that the entity meets in order to be eligible for treaty benefits. See §§ 1.1441–1(e)(4)(ii)(A)(*2*) and 1.1441–6(c)(5)(i) of the 2018 proposed regulations. Other proposed modifications relate to the documentation that a withholding agent may rely on to treat an address provided by an account holder that is subject to a hold mail instruction as a permanent residence address for purposes of an account holder's claim of foreign status or benefits under an income tax treaty. See §§ 1.1441–1(c)(38) and 1.1471–1(b)(62) and (99) of the 2018 proposed regulations. As discussed further in Parts V and VI of the Summary of Comments and Explanation of Revisions section of this preamble, these final regulations incorporate the modifications included in the 2018 proposed regulations with respect to those requirements. The Treasury Department and the IRS intend to finalize the remaining provisions of the 2018 proposed regulations in separate guidance at a future date.

No public hearing was requested or held with respect to the chapter 3 proposed regulations or the chapter 4 proposed regulations, though written comments were received and are available at *www.regulations.gov* or upon request. A public hearing was held with respect to the 2018 proposed regulations, but the topics raised in the hearing do not relate to the provisions in the 2018 proposed regulations that are finalized in this Treasury Decision. Written comments on the 2018 proposed regulations were received and are available at *www.regulations.gov* or upon request. After consideration of the comments received, the chapter 3 proposed regulations and the chapter 4 proposed regulations are adopted, with modifications (including the modifications generally described in the preceding paragraph to take into account certain provisions in the 2018 proposed regulations), as final regulations in this Treasury Decision, and the corresponding temporary regulations are removed.

This document also includes a limited number of technical corrections and conforming changes to final regulations under chapters 3, 4, and 61.

Summary of Comments and Explanation of Revisions

I. Requirement for a Withholding Agent To Obtain a Foreign Taxpayer Identification Number and Date of Birth

Section 1.1441–1T(e)(2)(ii)(B) provides that, beginning January 1, 2017, a beneficial owner withholding certificate provided to document an account that is maintained at a U.S. branch or office of a financial institution is required to contain the account holder's foreign taxpayer identification

[1] The notice of proposed rulemaking also included proposed regulations under chapter 4 relating to certain requirements for sponsoring entities, which regulations were finalized on March 25, 2019, in a Treasury Decision (TD 9852) published in the **Federal Register** (84 FR 10976).

number (foreign TIN) and, in the case of an individual account holder, the date of birth, in order for the withholding agent to treat such withholding certificate as valid. A withholding certificate that does not contain the account holder's date of birth will not be invalid if the withholding agent has the account holder's date of birth in its files. If an account holder does not have a foreign TIN, the account holder is required to provide a reasonable explanation for its absence. A foreign TIN obtained by a withholding agent is required to be reported on Form 1042–S (Foreign Person's U.S. Source Income Subject to Withholding).

After publication of the chapter 3 temporary regulations, the Treasury Department and the IRS received comments about the difficulty of obtaining foreign TINs and dates of birth from account holders by January 1, 2017. Several comments requested a delay of one or two years before the foreign TIN and date of birth requirements apply. One comment requested a one-year extension of the validity period for withholding certificates that are scheduled to expire on or before December 31, 2017 (unless there is a change in circumstance). Several comments noted that the requirement to obtain additional information from customers who had recently provided a withholding certificate to a withholding agent may damage the withholding agent's customer relationships, and suggested transitional rules to ease the redocumentation burden. These comments suggested various phase-in rules that would allow a withholding agent to treat a withholding certificate provided before the foreign TIN and date of birth requirements apply that would otherwise be valid as continuing to be valid until the withholding certificate otherwise expires. For example, for withholding certificates that have a three-year validity period, comments suggested that a withholding agent be required to obtain a foreign TIN and date of birth at the end of the three-year period. For withholding certificates that are valid indefinitely, comments suggested that withholding agents be allowed two or three years to collect new withholding certificates with a foreign TIN and date of birth.

Comments requested that a withholding certificate not be treated as invalid if the withholding agent obtains an account holder's foreign TIN and date of birth in any manner (for example, orally, in a written statement, or otherwise in account files). Comments also requested clarifications of terms used in § 1.1441–1T(e)(2)(ii)(B). Additionally, comments requested clarification of what constitutes a reasonable explanation for the absence of a foreign TIN.

Two comments requested that a withholding agent's failure to obtain an account holder's foreign TIN or date of birth not cause a withholding agent to treat a withholding certificate as invalid and withhold on payments made to the account holder. One comment suggested that an information reporting penalty apply instead. Another comment requested that the IRS waive penalties for a failure to include a foreign TIN on Form 1042–S for 2017 and 2018 under sections 6721 and 6722 (relating to penalties for failing to file correct information returns or to furnish correct payee statements, respectively).

In response to these comments, the Treasury Department and the IRS issued Notice 2017–46, which provides that the Treasury Department and the IRS intend to amend § 1.1441–1T(e)(2)(ii)(B) to generally narrow its application and provide additional time for a withholding agent to collect a foreign TIN (or a reasonable explanation for the absence of a foreign TIN) and date of birth from an account holder. Notice 2017–46 provides a one-year delay in the implementation of the foreign TIN and date of birth requirements for payments made on or after January 1, 2018 (rather than payments made on or after January 1, 2017). Notice 2017–46 also provides transitional rules that phase in the requirement to obtain a foreign TIN for withholding certificates provided before January 1, 2018. These transitional rules generally allow a withholding agent to continue to treat an otherwise valid withholding certificate as valid even if it does not contain a foreign TIN (or a reasonable explanation for the absence of a foreign TIN) until January 1, 2020 (provided there is no change in circumstance and the withholding certificate does not expire). For payments made on or after January 1, 2020, the transitional rules permit a withholding agent to treat a withholding certificate obtained before January 1, 2018, as valid if the withholding agent obtains the account holder's foreign TIN on a written statement or if the withholding agent otherwise has the account holder's foreign TIN in the withholding agent's files (provided there is no change in circumstance that requires a revised withholding certificate and the withholding certificate does not expire). These transitional rules were intended to align with the transitional period (the end of 2019, as also provided in Notice 2017–46) permitted for reporting Model 1 FFIs to obtain and report required U.S. TINs for their preexisting accounts that are U.S. reportable accounts.

Notice 2017–46 also includes exceptions for an account holder that is (i) resident in a jurisdiction identified by the IRS on a list of jurisdictions that do not issue foreign TINs, (ii) a government, international organization, foreign central bank, or resident of a U.S. territory, or (iii) resident in a jurisdiction with which the United States does not have an agreement relating to the exchange of tax information in force. In addition, the notice limits the requirement to obtain a foreign TIN and date of birth to payments of U.S. source income reportable on Form 1042–S.

Consistent with § 1.1441–1T(e)(2)(ii)(B), Notice 2017–46 provides that the foreign TIN and date of birth requirements apply for purposes of determining the validity of a withholding certificate. These final regulations do not adopt the comment suggesting that an information reporting penalty that is imposed on the withholding agent should apply rather than treating the withholding certificate as invalid and thereby requiring that withholding at the full 30-percent rate be applied on payments to the account holder that are reportable on Form 1042–S. The Treasury Department and the IRS determined that it is more appropriate to apply the consequences of noncompliance to the account holder that remains insufficiently documented rather than imposing a penalty on the withholding agent. Further, the amount that may be assessed based on a penalty for incorrect information reporting is in general small compared to the withholding that would result from an invalid withholding certificate and therefore is unlikely to be a sufficient incentive for an account holder to provide the missing information in many cases.

After the publication of Notice 2017–46, some jurisdictions with laws that restrict the collection or disclosure of foreign TINs of their residents requested that their residents not be required to provide foreign TINs to withholding agents for purposes of § 1.1441–1T(e)(2)(ii)(B). In response to those requests, the Treasury Department and the IRS issued Notice 2018–20, which provides that the IRS intends to expand its list of jurisdictions that do not issue foreign TINs to their residents to include jurisdictions that request to be included on the list, even if the jurisdiction issues foreign TINs to its residents. The list of jurisdictions for which a withholding agent is not required to collect a foreign TIN of a resident in such jurisdiction is available

at *https://www.irs.gov/businesses/corporations/list-of-jurisdictions-that-do-not-issue-foreign-tins* (or at any successor website or as provided in subsequent published guidance).

These final regulations incorporate the chapter 3 temporary regulations and the provisions in Notice 2017–46 and Notice 2018–20 with minor changes. Comments received after the publication of those notices are described in the following paragraphs.

Several comments requested that withholding agents be permitted to obtain a foreign TIN through other means (such as orally, on a statement, or from the withholding agent's files) when it is not provided on a withholding certificate signed on or after January 1, 2018 (rather than only withholding certificates signed before January 1, 2018, as provided in Notice 2017–46). One of those comments noted that a foreign TIN in a withholding agent's files may have been collected orally. While withholding agents may rely on foreign TINs in their files for withholding certificates signed before January 1, 2018 without investigating whether they were obtained orally, the Treasury Department and the IRS have determined that this allowance should be limited to the transition period because an oral statement does not provide adequate assurance of accuracy and may raise recordkeeping concerns. However, to provide flexibility for withholding agents, the Treasury Department and the IRS have determined that a separate written statement is an acceptable way for a withholding agent to collect an account holder's foreign TIN, provided that the account holder represents its foreign TIN in a signed written statement that acknowledges that such statement is a part of the withholding certificate and the withholding agent associates the statement with the account holder's withholding certificate. While the Treasury Department and the IRS expect that withholding agents will generally obtain foreign TINs on withholding certificates, this allowance permits withholding agents to cure incomplete withholding certificates by obtaining the foreign TIN on a separate statement rather than having to obtain a new withholding certificate. The requirement that the signed written statement include an acknowledgment that such statement is part of the withholding certificate ensures that the statement is subject to penalties of perjury to the same extent as any other information provided on the withholding certificate.

A comment requested an exception to the foreign TIN requirement for ''onshore accounts that would, by analogy, qualify as excluded financial accounts.'' These final regulations define the term ''account'' for purposes of § 1.1441–1(e)(2)(ii)(B) by cross-referencing the definition of a financial account under § 1.1471–5(b), thereby incorporating the exceptions provided in that paragraph. Therefore, the Treasury Department and the IRS do not believe that additional changes are needed to the definition.

The same comment requested the elimination of the foreign TIN requirement for a beneficial owner withholding certificate of a foreign financial institution (FFI) because jurisdictions with a reciprocal Model 1 IGA may not need the foreign TINs of financial institutions. This comment is not adopted because there is no exception for an account held by a financial institution in the Model 1 IGA jurisdiction in the definition of the term ''FATCA partner reportable account'' (which defines accounts with respect to which the United States provides information to the partner jurisdiction).

These final regulations clarify the application of the exception to the requirement that a withholding certificate include a foreign TIN for an account holder that is a government, international organization, foreign central bank, or resident of a U.S. territory by adding an example specifying that an account holder may claim foreign government status either under section 892 or otherwise when the withholding agent may rely upon a claim of exemption either under § 1.1441–8 (generally on an IRS Form W–8–EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting) or under § 1.1441–7 (generally on an IRS Form W–8BEN–E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)).

These final regulations also clarify the standard of knowledge applicable to a date of birth by providing that a withholding agent may rely on a date of birth provided on a withholding certificate unless it knows or has reason to know that the date of birth is incorrect. This is the same standard of knowledge applicable to foreign TINs. Finally, these final regulations incorporate the allowance in the instructions for Form W–8 that a reasonable explanation may be provided on a separate attached statement associated with the withholding certificate.

II. Nonqualified Intermediary Withholding Statements

Under the chapter 3 regulations, a nonqualified intermediary is generally required to provide to a withholding agent a Form W–8IMY (Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting), a withholding statement, and the documentation for each payee for which the intermediary receives a payment. A withholding statement must allocate the payment to each payee and provide each payee's name, address, TIN (if any), type of documentation provided, and type of recipient (applying the recipient category codes listed on Form 1042–S). Because this information may also be included on a payee's documentation that is associated with the withholding statement, the chapter 3 temporary regulations provide that a nonqualified intermediary may provide a withholding statement that does not include all of the information described in the preceding sentence, provided that this information can be found on withholding certificates associated with the nonqualified intermediary withholding statement and certain other requirements are met. One of those requirements is that the nonqualified intermediary represent to the withholding agent that the information on the withholding certificates associated with the withholding statement is not inconsistent with any other account information the nonqualified intermediary has for purposes of determining the withholding rate applicable to each payee.

A comment requested clarification of the standard of knowledge applicable to a nonqualified intermediary for purposes of the representation that the information on the payees' withholding certificates is not inconsistent with any other account information the nonqualified intermediary has for purposes of determining the withholding rate applicable to each payee. These final regulations clarify that the general standards of knowledge that are applicable to withholding agents apply to a nonqualified intermediary for reliance on payee documentation for purposes of making the representation described in the preceding sentence.

As noted in the first paragraph of this Part II, a nonqualified intermediary must provide on its withholding statement the recipient category code for each payee. A comment noted that nonqualified intermediaries generally

do not have familiarity with determining the appropriate chapter 4 recipient code for Form 1042–S reporting purposes because nonqualified intermediaries generally do not file Form 1042–S and the chapter 4 recipient categories listed on Form 1042–S differ from the chapter 4 status categories listed on a Form W–8 that may be provided by a payee. Because a withholding agent making a payment to the nonqualified intermediary is required to file Form 1042–S, the comment suggested that the withholding agent is better able to determine the appropriate chapter 4 recipient code than a nonqualified intermediary. The comment recommended that the requirement for chapter 4 recipient codes be eliminated for certain withholding statements or that the IRS provide information on the relationship between chapter 4 recipient status on Forms W–8 and Form 1042–S. The Treasury Department and the IRS have determined that it is important to continue to obtain chapter 4 recipient codes but agree with the comment that withholding agents may be better able to determine the appropriate chapter 4 recipient code than a nonqualified intermediary. In response to the comment, these final regulations provide that a nonqualified intermediary may provide a withholding statement that does not include a chapter 4 recipient code for one or more payees if the withholding agent is able to determine the appropriate recipient code based on other information included on, or associated with, the withholding statement or that is otherwise contained in the withholding agent's records with respect to the payee. *See* § 1.1441–1(e)(3)(iv)(C)(*3*)(*ii*).

The provisions described in this Part II also apply to nonqualified intermediary withholding statements associated with withholdable payments under chapter 4 by cross-reference to § 1.1441–1(e)(3)(iv)(C)(*3*). *See* § 1.1471–3(c)(3)(iii)(B)(*5*).

III. Electronic Signatures for Purposes of Chapters 3 and 4

Section 1.1441–1T(e)(4)(i)(B) permits a withholding agent to accept an electronically signed withholding certificate if the withholding certificate reasonably demonstrates to the withholding agent that it has been electronically signed by the recipient identified on the form or a person authorized by the recipient to sign the form. The regulation includes an example that illustrates when a withholding agent may treat a withholding certificate as validly signed based on a review of a withholding certificate that reasonably demonstrates that it has been electronically signed (as opposed to appearing to have a typed name as a signature). This provision applies in addition to the allowance provided under § 1.1441–1(e)(4)(iv) for a withholding agent to establish its own system for a beneficial owner or payee to electronically furnish to the withholding agent (and sign electronically) a Form W–8. A comment requested that the example be removed because it could be interpreted as providing a minimum standard for accepting an electronically signed withholding certificate and may become inconsistent with future changes in technology for providing electronic signatures. Two comments also requested that the final regulations allow reliance on an electronically signed Form W–9 (Request for Taxpayer Identification Number and Certification), and one comment requested that a withholding agent be permitted to rely on a withholding certificate collected through an electronic system maintained by a nonqualified intermediary or flow-through entity if the nonqualified intermediary or flow-through entity provides a written statement confirming that the electronic system meets the requirements of § 1.1441–1(e)(4)(iv), as described in Notice 2016–08, 2016–6 I.R.B. 304.

The Treasury Department and the IRS are of the view that a clear illustration of when a withholding agent can readily determine that a withholding certificate is electronically signed under current technology that is frequently used in the industry is warranted as it demonstrates the difference between an acceptable electronic signature in contrast to merely having a printed name or unrecognizable notation in place of a name. Further, § 1.1441–1T(e)(4)(i)(B) clearly states that this illustration is simply an example of one set of facts that satisfies the rule. Thus, this example is retained in these final regulations. To provide additional flexibility, these final regulations permit a withholding agent to consider, in addition to the withholding certificate itself, other documentation or information the withholding agent has that supports that a withholding certificate was electronically signed, provided that the withholding agent does not have actual knowledge that the documentation or information is incorrect. These final regulations do not add a specific allowance for Form W–9 in § 1.1441–1(e)(4)(i)(B) because rules regarding reliance on an electronically signed Form W–9 are provided in separate guidance, such as the Requestor Instructions to Form W–9. Additionally, in light of the general rule in § 1.1441–1(e)(4) that provides that the rules in such paragraph are applicable to Form W–8, Form 8233, and certain documentary evidence, the specific exclusion in § 1.1441–1T(e)(4)(i)(B) for Form W–9 is unnecessary and therefore not included in these final regulations.

The provisions described in this Part III also apply to chapter 4 by cross-reference to § 1.1441–1(e)(4)(i)(B). *See* § 1.1471–3(c)(3)(i).

IV. Withholding Certificates and Withholding Statements Furnished Through a Third Party Repository for Purposes of Chapters 3 and 4

Section 1.1441–1T(e)(4)(iv)(E) provides the circumstances under which a withholding certificate (and in certain circumstances a withholding statement) received electronically by a withholding agent from a third party repository will be considered furnished to the withholding agent by the person whose name is on the certificate. These circumstances include that a withholding agent be able to associate a withholding certificate received from a third party repository with a specific request for the withholding certificate and a specific authorization from the person (or agent of the person) providing the certificate with respect to each specific payment or each specific obligation maintained by the withholding agent. A comment requested clarification on whether a specific request and specific authorization is required each time a withholding agent makes a payment. The standards for requiring a separate request and separate authorization to obtain a withholding certificate from a third party repository were not intended to deviate from the standards for when a withholding agent may continue to rely on a withholding certificate furnished directly by the person providing the withholding certificate (or such person's agent). Therefore, these final regulations clarify that a separate request and separate authorization to obtain a withholding certificate from a third party repository is not required for each payment made by a withholding agent when the withholding agent is otherwise permitted to rely on the withholding certificate on an obligation-by-obligation basis or as otherwise permitted under § 1.1441–1(e)(4)(ix).

Other comments requested that § 1.1441–1T(e)(4)(iv)(E) specifically provide that a withholding agent may rely on a Form W–9 obtained from a third party repository. However, the

validity requirements for reliance on a Form W–9 are contained in the section 3406 regulations (and related guidance under that section) and are not generally amended solely for purposes of a withholding agent's reliance in the case of a payment subject to withholding under section 1441. As a result, these final regulations are not amended to add an allowance for a withholding agent's reliance on a Form W–9 obtained from a third party repository, and taxpayers should continue to refer to the other guidance applicable to reliance on a Form W–9. Additionally, the specific exclusion in § 1.1441–1T(e)(4)(iv)(E) for Form W–9 is not included in these final regulations for the same reason that the exclusion for Form W–9 is not included in § 1.1441–1(e)(4)(i)(B), as described in Part III of this Summary of Comments and Explanation of Revisions of this preamble.

As the final chapter 4 regulations adopted by this Treasury Decision cross reference the final chapter 3 regulations for when a withholding agent may treat a withholding certificate received from a third party repository as provided by a payee, the above-described modifications to § 1.1441–1T(e)(4)(iv)(E) also apply to a withholding certificate or withholding statement relied upon for chapter 4 purposes.

V. Limitation on Benefits for Treaty Claims on Withholding Certificates and Treaty Statements Provided With Documentary Evidence for Purposes of Chapter 3

Under the regulations under chapter 3, in order for a withholding agent to apply a reduced rate of withholding based on an entity's claim for benefits under a tax treaty, the withholding agent must obtain either (i) a withholding certificate that includes a treaty claim on the certificate, or (ii) documentary evidence and a separate treaty statement. Under the chapter 3 temporary regulations, a treaty statement must, among other things, identify the specific limitation on benefits (LOB) provision of the applicable treaty on which the beneficial owner relies to claim the treaty benefit. Section 1.1441–6(b)(1) provides that generally, absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if the withholding agent can reliably associate the payment with a beneficial owner withholding certificate, or, in the case of a payment made outside the United States with respect to an offshore obligation, documentary evidence and a treaty statement. This general standard of knowledge is modified in two situations in the chapter 3 temporary regulations. First, § 1.1441–6T(b)(1)(ii) provides that a withholding agent's reason to know that a beneficial owner's claim to a reduced rate of withholding under an income tax treaty is unreliable or incorrect includes when the beneficial owner claims benefits under an income tax treaty that does not exist or is not in force, and that a withholding agent may determine whether a tax treaty exists or in force by checking a list maintained on the IRS website. Second, § 1.1441–6T(b)(1)(i) provides that a withholding agent may rely on a beneficial owner's claim regarding its reliance on a specific LOB provision absent actual knowledge that such claim is unreliable or incorrect.

The chapter 3 temporary regulations also add a validity period of three years for a treaty statement provided with documentary evidence in order to provide parity with the validity period for a withholding certificate containing a treaty claim, enhance the reliability and increase the accuracy of the claims, and help ensure that information is updated when ownership thresholds or activity requirements in a particular treaty have changed. The chapter 3 temporary regulations provide a transitional rule under which accounts opened and documented with documentary evidence and a treaty statement prior to January 6, 2017 (preexisting accounts) will expire on January 1, 2019.

A comment requested that the standard of knowledge applicable to a LOB provision should be limited to determining whether a tax treaty exists and is in force. The Treasury Department and IRS are of the view that such limitation would be inappropriate because a determination of whether a treaty exists and is in force is a general rule applicable to a treaty claim and not specifically related to a limitation on benefits provision. Moreover, the actual knowledge standard applicable to a limitation on benefits provision is already sufficiently limited as it should not generally require a withholding agent to obtain facts it does not normally request or render a conclusion it could not readily make from the information it already has otherwise collected. Thus, this comment is not adopted, and these final regulations adopt the standard of knowledge in the chapter 3 temporary regulations for reliance on a LOB provision associated with a treaty claim made on a withholding certificate without modification. *See* § 1.1441–6(b)(1)(i) and (ii).

Comments also noted the burden of complying with the new LOB requirement for treaty statements associated with documentary evidence, including difficulties in obtaining new treaty statements by the January 1, 2019, expiration date given the large number of account holders providing treaty statements before January 6, 2017. The comments requested an additional one-year period for withholding agents to obtain new treaty statements with LOB representations to replace treaty statements obtained before January 6, 2017. A comment also requested a further explanation of the reasoning for the three-year validity period for a treaty statement.

In response to these comments, the 2018 proposed regulations include revisions to the LOB requirement and validity period for treaty statements in the chapter 3 temporary regulations. The 2018 proposed regulations extend the time for withholding agents to obtain treaty statements with the specific LOB provisions identified for preexisting accounts to January 1, 2020 (rather than the January 1, 2019 date included in the chapter 3 temporary regulations). These final regulations incorporate this extension for preexisting accounts.

The 2018 proposed regulations also add an exception to the three-year validity period for treaty statements associated with documentary evidence provided by tax-exempt organizations (other than tax-exempt pension trusts or pension funds), governments, and publicly traded corporations. With this exception, the validity period for treaty statements is more closely aligned with the validity period for treaty claims on withholding certificates. The Treasury Department and the IRS have also determined that, apart from this exception, three years is an appropriate validity period for treaty statements and treaty claims because it requires the entity to periodically redetermine whether it continues to meet the LOB provision.

A comment to the 2018 proposed regulations requested that the exception to the three-year validity period for treaty statements provided by tax-exempt organizations, governments, and publicly traded corporations, be extended to apply to withholding certificates used by such entities to make treaty claims. However, a withholding certificate contains not only a treaty claim, but also information and representations about the entity making the treaty claim (including representations relevant for chapter 4 purposes). Therefore, it is not appropriate for this exception to be

extended to withholding certificates used to make treaty claims. Therefore, these final regulations do not adopt this comment and generally incorporate the same exception to the three-year validity period for treaty statements that is provided in the 2018 proposed regulations. However, these final regulations do not include the record retention requirement included in the 2018 proposed regulations for treaty statements from publicly traded corporations because the Treasury Department and the IRS have determined that a retention requirement in this case is unnecessary for information that is publicly available.

These final regulations also include the same modification included in the 2018 proposed regulations to correct an inadvertent omission of the applicable standard for a withholding agent's reliance on the beneficial owner's identification of a LOB provision on a treaty statement, incorporating the same actual knowledge standard that applies to a withholding certificate used for a treaty claim.

A qualified intermediary, withholding foreign partnership, and withholding foreign trust may rely on the amendments described in this Part V until they are incorporated into the applicable withholding agreement.

VI. Permanent Residence Address Subject To Hold Mail Instruction for Purposes of Chapters 3 and 4

Sections 1.1441–1T(c)(38)(ii) and 1.1471–1T(b)(99) allow a withholding agent to treat an address provided by a beneficial owner or account holder as that person's permanent residence address even if the address is subject to a hold mail instruction, provided that the withholding agent obtains documentary evidence establishing the person's residence in the country in which the person claims to be a resident for tax purposes. Comments requested that the hold mail rule be eliminated, and if it is not eliminated that a withholding agent be allowed to rely on documentary evidence establishing a person's foreign status (rather than the person's residency in a particular country) unless the person is claiming treaty benefits, and requested clarification on the definition of the term ''hold mail instruction'' and the categories of documentary evidence that can be relied upon.

The Treasury and the IRS have determined that the hold mail rule is necessary in order to ensure that taxpayers identify a true permanent residence address. In response to the other comments, the 2018 proposed regulations included proposed modifications to the requirements for reliance on an address subject to a hold mail instruction. The 2018 proposed regulations provide that the documentary evidence required in order to treat an address that is provided subject to a hold mail instruction as a permanent residence address is documentary evidence that supports the person's claim of foreign status or, for a person claiming treaty benefits, documentary evidence that supports the person's residence in the country where the person claims treaty benefits. Regardless of whether the person claims treaty benefits, the 2018 proposed regulations allow a withholding agent to rely on documentary evidence described in § 1.1471–3(c)(5)(i), without regard to whether the documentation contains a permanent residence address.

A comment also requested the removal of any limitations on reliance on a permanent residence address subject to a hold mail instruction because many account holders prefer to receive electronic correspondence rather than paper mail. In response to this comment, the 2018 proposed regulations added a definition of a hold mail instruction to clarify that a hold mail instruction does not include a request to receive all correspondence (including account statements) electronically. Because no comments were received on the 2018 proposed regulations specific to the modified requirements for reliance on an address subject to a hold mail instruction, those provisions of the 2018 proposed regulations are included in these final regulations. A qualified intermediary, withholding foreign partnership, and withholding foreign trust may rely on the amendments described in this Part VI until they are incorporated into the applicable withholding agreement.

VII. Technical Corrections, Conforming Change, and Applicability Dates

The final regulations in TD 9808 modified § 1.1441–1(e)(3)(iv)(B) (general requirements for withholding statements provided by nonqualified intermediaries) and (f)(1) (applicability date) of the chapter 3 regulations. The last sentence of modified § 1.1441–1(e)(3)(iv)(B) and the first sentence of (f)(1), however, include typographical errors, which are corrected in these final regulations. In addition, the final regulations in TD 9808 modified § 1.1461–1(c)(1)(i) to allow a withholding agent to furnish a recipient copy of Form 1042–S electronically. These final regulations make a conforming change to § 1.6049–6(e)(4) to allow a payor to furnish a recipient copy of Form 1042–S electronically to a nonresident alien individual that is paid deposit interest reportable under § 1.6049–4(b)(5). To clarify that the 90-day grace period applies to a change in circumstance that results from a jurisdiction ceasing to be treated as having an IGA in effect, the text in § 1.1471–3T(c)(6)(ii)(E)(*4*) is moved to § 1.1471–3(c)(6)(ii)(E)(*3*) (which provides the 90-day period for changes in circumstance). Finally, these final regulations make ministerial changes to the applicability date provision in § 1.1441–1(f) to combine the applicability dates of these final regulations with regulations issued under section 871(m) that previously were contained in § 1.1441–1(f)(3) and (f)(5) in § 1.1441–1(f)(3), and clarify the applicability dates of §§ 1.1441–2 (with respect to certain payments) and 1.1441–6 (with respect to identification of limitation on benefits provisions).

Special Analyses

I. Regulatory Planning and Review

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Paperwork Reduction Act

These final regulations reduce certain information collection burdens that were included in the chapter 3 temporary regulations. For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), these reductions in reporting burdens will be reflected in the PRA submissions associated with Forms W–8 and 1042–S.

In response to comments on the chapter 3 proposed regulations, these final regulations reduce the information collection burden by permitting taxpayers to use alternative methods of providing documentation to withholding agents and to provide less information on certain documentation. These final regulations also reduce information collection burden by permitting taxpayers to provide certain documentation in a less burdensome manner. The provisions reducing collections of information are in §§ 1.1441–1(e)(2)(ii)(B), (e)(3)(iv)(C)(*3*)(*ii*) and (e)(4)(i)(B) and 1.6049–6(e)(4). Section 1.1441–1(e)(2)(ii)(B) allows payees to provide to a withholding agent their foreign TIN on a separate statement rather than on a withholding certificate, for withholding certificates provided after January 1,

2018. This allowance provides flexibility for a payee to use other methods of transmitting information and permits a withholding agent to continue to treat a withholding certificate as valid rather than requesting a new withholding certificate from the payee. Section 1.1441–1(e)(3)(iv)(C)(*3*)(*ii*) permits nonqualified intermediaries to provide withholding statements to withholding agents that omit certain information (a chapter 4 recipient code) that was previously required. This allowance provides more flexibility for a nonqualified intermediary to provide to a withholding agent a Form W–8IMY that is treated as valid. Section 1.1441–1(e)(4)(i)(B) provides an alternative method for a withholding agent to determine whether a withholding certificate is electronically signed, which provides flexibility for withholding agents that are verifying the validity of such certificates. Section 1.6049–6(e)(4) permits withholding agents to provide Form 1042–S to a payee electronically rather than in hard copy.

The reductions in reporting burden provided in these final regulations will be reflected in the PRA submission associated with Forms W–8BEN, W–8BEN–E, W–8ECI, W–8EXP, and W–8IMY (OMB control number 1545–1621) and the PRA submission associated with Form 1042–S (OMB control number 1545–0096).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

III. Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6).

This rule primarily affects withholding agents, such as financial institutions, that make U.S.-connected payments to foreign payees. For purposes of the RFA, small financial institutions are those with less than $600 million in assets. The Treasury Department and the IRS do not have data readily available to assess the number of small entities potentially affected by these regulations. Even if a substantial number of domestic small entities were affected by the final regulations, the Treasury Department and the IRS have determined that the economic impact to these entities will not be significant. These final regulations reduce the collection of information requirements that are currently applicable under existing rules under chapters 3 and 4 in TDs 9808 and 9809. Those rules include detailed requirements for how a withholding agent identifies a payee, documents the payee's status, and reports to the IRS and the payee. Those information collections were certified previously by the Treasury Department and the IRS as not resulting in a significant economic impact on a substantial number of small business entities. The final regulations include a limited number of changes to the temporary regulations that reduce the burden of withholding agents. The burden-reducing revisions of these final regulations provide benefits for both small and large entities because these final regulations allow a withholding agent to collect a foreign TIN from a payee on a separate statement; allow certain intermediaries to provide withholding statements that omit certain information (specifically, a chapter 4 recipient code) that was previously required; provide an alternative method for a withholding agent to determine whether a withholding certificate is electronically signed; and allow withholding agents to provide payee statements electronically rather than in paper form.

Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Association for comment on its impact on small business, and no comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (titled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Drafting Information

The principal authors of these regulations are Charles Rioux, Nancy Erwin, and John Sweeney, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

Effect on Other Documents

Section 4 of Notice 2016–08 (2016–6 I.R.B. 304) is obsolete as of January 2, 2020.

Sections 4 and 5 of Notice 2017–46 (2017–41 I.R.B. 275) are obsolete as of January 2, 2020.

Statement of Availability of IRS Documents

The IRS notices cited in this preamble are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov*.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1441–0 is amended by:

■ 1. Revising the entry for § 1.1441–1(e)(2)(ii)(B).

■ 2. Adding entries for § 1.1441–1(e)(2)(ii)(B)(*1*) through (*6*) and (e)(4)(iv)(F).
■ 3. Revising the entry for § 1.1441–1(f)(3).

The revision and additions read as follows:

§ 1.1441–0 Outline of regulation provisions for section 1441.

* * * * *

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) Requirement to collect foreign TIN and date of birth.

(*1*) In general.

(*2*) Definitions.

(*3*) Requirements for reasonable explanation of the absence of a foreign TIN.

(*4*) Exceptions to the requirement to obtain a foreign TIN (or reasonable explanation for its absence).

(*i*) Jurisdictions with which the United States does not have an agreement relating to the exchange of tax information.

(*ii*) Jurisdictions that do not issue foreign TINs.

(*iii*) Account holder that is a government, international organization, foreign central bank of issue, or resident of a U.S. territory.

(*5*) Transition rules for the foreign TIN requirement for a beneficial owner withholding certificate signed before January 1, 2018.

(*i*) Payments made before January 1, 2020.

(*ii*) Payments made after December 31, 2019.

(*iii*) Limitation on standard of knowledge.

(*6*) Transition rule for the date of birth requirement for a beneficial owner withholding certificate signed before January 1, 2018.

* * * * *

(4) * * *

(iv) * * *

(F) Examples.

(1) Example 1.

(2) Example 2.

(3) Example 3.

* * * * *

(f) * * *

(1) In general.

* * * * *

(3) Special rules related to section 871(m).

* * * * *

■ **Par. 3.** Section 1.1441–1 is amended by:

■ 1. Revising paragraphs (b)(7)(ii)(B), (c)(2)(ii), (c)(3)(ii), (c)(38), and (e)(2)(ii)(B).
■ 2. Removing ''§ 1.1471–3(c)(3)(ii)(B)(*2*)(*iii*)'' and adding in its place ''§ 1.1471–3(c)(3)(iii)(B)(*2*)(*iii*)'' at the end of the last sentence of paragraph (e)(3)(iv)(B).
■ 3. Revising paragraphs (e)(3)(iv)(C)(*3*), (e)(4)(i)(B), and (e)(4)(ii)(A)(*2*).
■ 4. Adding a sentence to the end of paragraph (e)(4)(ii)(D)(*1*).
■ 5. Revising paragraphs (e)(4)(iv)(C) and (E).
■ 6. Adding paragraph (e)(4)(iv)(F).
■ 7. Revising paragraphs (f)(1) and (3).
■ 8. Removing paragraphs (f)(4) and (5).

The revisions and additions read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(b) * * *

(7) * * *

(ii) * * *

(B) *Special rules for establishing that income is effectively connected with the conduct of a U.S. trade or business.* A withholding certificate received after the date of payment to claim under § 1.1441–4(a)(1) that income is effectively connected with the conduct of a U.S. trade or business will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. The signed affidavit must also state that the beneficial owner has included the income on its U.S. income tax return for the taxable year in which it is required to report the income or, alternatively, that the beneficial owner intends to include the income on a U.S. income tax return for the taxable year in which it is required to report the income and the due date for filing such return (including any applicable extensions) is after the date on which the affidavit is signed. A certificate received within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain the affidavit described in the preceding sentences.

* * * * *

(c) * * *

(2) * * *

(ii) *Dual residents.* Individuals will not be treated as U.S. persons for purposes of this section for a taxable year or any portion of a taxable year for which they are a dual resident taxpayer (within the meaning of § 301.7701(b)–7(a)(1) of this chapter) who is treated as a nonresident alien pursuant to § 301.7701(b)–7(a)(1) of this chapter for purposes of computing their U.S. tax liability.

(3) * * *

(ii) *Nonresident alien individual.* The term *nonresident alien individual* means persons described in section 7701(b)(1)(B), alien individuals who are treated as nonresident aliens pursuant to § 301.7701(b)–7 of this chapter for purposes of computing their U.S. tax liability, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under § 301.7701(b)–1(d) of this chapter. An alien individual who has made an election under section 6013(g) or (h) to be treated as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

* * * * *

(38) *Permanent residence address*—(i) *In general.* The term *permanent residence address* is the address in the country of which the person claims to be a resident for purposes of that country's income tax. In the case of a withholding certificate furnished in order to claim a reduced rate of withholding under an income tax treaty, whether a person is a resident of a treaty country must be determined in the manner prescribed under the applicable treaty. See § 1.1441–6(b). The address of a financial institution with which the person maintains an account, a post office box, or an address used solely for mailing purposes is not a permanent residence address unless such address is the only address used by the person and appears as the person's registered address in the person's organizational documents. Further, an address that is provided subject to a hold mail instruction (as defined in paragraph (c)(38)(ii) of this section) is not a permanent residence address unless the person provides the documentary evidence described in paragraph (c)(38)(ii) of this section. If the person is an individual who does not have a tax residence in any country, the permanent residence address is the place at which the person normally resides. If the person is an entity and does not have a tax residence in any country, then the permanent residence address of the entity is the place at which the person maintains its principal office.

(ii) *Hold mail instruction.* The term *hold mail instruction* means a current

instruction by a person to keep the person's mail until such instruction is amended. An instruction to send all correspondence electronically is not a hold mail instruction. An address that is subject to a hold mail instruction may be used as a permanent residence address if the person has also provided the withholding agent with documentary evidence described in § 1.1471–3(c)(5)(i) (without regard to the requirement in § 1.1471–3(c)(5)(i) that the documentary evidence contain a permanent residence address). The documentary evidence described in § 1.1471–3(c)(5)(i) must support the person's claim of foreign status or, in the case of a person that is claiming treaty benefits, must support residence in the country where the person is claiming a reduced rate of withholding under an income tax treaty. If, after a withholding certificate is provided, a person's permanent residence address is subsequently subject to a hold mail instruction, the addition of the hold mail instruction is a change in circumstances requiring the person to provide the documentary evidence described in this paragraph (c)(38)(ii) in order for a withholding agent to use the address as a permanent residence address.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) *Requirement to collect foreign TIN and date of birth*—(*1*) *In general.* In addition to the general requirements of paragraph (e)(2)(ii)(A) of this section, except as provided in paragraphs (e)(2)(ii)(B)(*4*), through (*6*) of this section, a beneficial owner withholding certificate provided by an account holder to document an account that is maintained at a U.S. branch or office of a withholding agent that is a financial institution is valid for purposes of a payment of U.S. source income reportable on Form 1042–S (before the application of this paragraph (e)(2)(ii)(B)) made on or after January 1, 2018, only if it contains the account holder's taxpayer identification number issued by the account holder's jurisdiction of tax residence (foreign TIN) or a reasonable explanation for the absence of a foreign TIN (as described in paragraph (e)(2)(ii)(B)(*3*) of this section) and, in the case of an individual account holder, the account holder's date of birth, unless the withholding agent has the account holder's date of birth in its files. A withholding agent is permitted to obtain a foreign TIN on a written statement signed by an account holder that includes an acknowledgment that such statement is part of the withholding certificate if the withholding agent associates such statement with the account holder's withholding certificate. A withholding agent will be treated as having the account holder's date of birth in its files if it obtains the date of birth on a written statement (including a written statement transmitted by email) from the account holder. A withholding agent may rely on the foreign TIN and date of birth contained in the withholding certificate unless it knows or has reason to know that the foreign TIN or date of birth is incorrect. Therefore, a withholding agent will not be required to validate the format or other specifications of the foreign TIN against the applicable jurisdiction's TIN system. For purposes of this paragraph (e)(2)(ii)(B), a change of address to another jurisdiction other than the United States is a change in circumstances for purposes of a withholding agent's reliance on a foreign TIN of the account holder (or reasonable explanation for its absence).

(*2*) *Definitions.* For purposes of this paragraph (e)(2)(ii)(B), the term ''account'' means a financial account as defined in § 1.1471–5(b) (substituting ''U.S. office or branch of a financial institution'' for ''FFI''); the term ''account holder'' has the meaning described in § 1.1471–5(a)(3); and the term ''financial institution'' means an entity that is a depository institution, custodial institution, investment entity, or a specified insurance company, each as defined in § 1.1471–5(e).

(*3*) *Requirements for reasonable explanation of the absence of a foreign TIN.* A withholding agent may rely on a reasonable explanation for the absence of a foreign TIN on a beneficial owner withholding certificate only if the explanation addresses why the account holder was not issued a foreign TIN. An explanation provided in the instructions for, as applicable, Forms W–8BEN, W–8BEN–E, W–8ECI, W–8EXP, or Form W–8IMY is a reasonable explanation. If an account holder provides an explanation other than as described in the preceding sentence, the withholding agent must determine whether the explanation is reasonable. A reasonable explanation may be provided on the withholding certificate or on a separate attached statement associated with the form. A withholding agent may rely on a reasonable explanation described in this paragraph (e)(2)(ii)(B)(*3*) unless it has actual knowledge that the account holder has a foreign TIN.

(*4*) *Exceptions to the requirement to obtain a foreign TIN (or reasonable explanation for its absence)*—(*i*) *Jurisdictions with which the United States does not have an agreement relating to the exchange of tax information.* A beneficial owner withholding certificate is not required to include a foreign TIN (or reasonable explanation for its absence) for an account holder resident of a jurisdiction that is not identified, in an applicable revenue procedure (see § 601.601(d)(2) of this chapter), as a jurisdiction that has in effect with the United States an income tax or other convention or bilateral agreement relating to the exchange of tax information within the meaning of section 6103(k)(4), under which the United States agrees to provide, as well as receive, tax information. A withholding agent that applies the exception described in the preceding sentence is, however, required to obtain the foreign TIN (or reasonable explanation for its absence) of each account holder resident in a jurisdiction that is added to the list on the applicable revenue procedure, before the time for filing Form 1042–S (with any applicable extension) for payments made during the calendar year following the calendar year in which the revenue procedure was published that added the jurisdiction to the list.

(*ii*) *Jurisdictions that do not issue foreign TINs.* A beneficial owner withholding certificate is not required to include a foreign TIN (or reasonable explanation for its absence) for an account holder resident of a jurisdiction that has been identified by the IRS on a list of jurisdictions that either do not issue foreign TINs to their residents or have requested that their residents not be required to provide foreign TINs to withholding agents for purposes of this paragraph (e)(2)(ii)(B). A withholding agent that applies the exception described in the preceding sentence is, however, required to obtain the foreign TIN (or reasonable explanation for its absence) of each account holder resident in a jurisdiction that is removed from the list of jurisdictions referenced in the preceding sentence before the time for filing Form 1042–S (with any applicable extension) for payments made during the calendar year following the calendar year in which the jurisdiction is removed from the list. A list of jurisdictions that either do not issue taxpayer identification numbers to their residents or that have requested to be included on the list is available at *https://www.irs.gov/businesses/corporations/list-of-jurisdictions-that-do-not-issue-foreign-tins* (or any replacement page on the IRS website or as provided in published guidance).

(*iii*) *Account holder that is a government, international organization, foreign central bank of issue, or resident of a U.S. territory.* A beneficial owner withholding certificate is not required to include a foreign TIN (or reasonable explanation for its absence) if the withholding agent has obtained a valid withholding certificate under paragraph (e)(2)(ii)(A) of this section or other documentation on which it may rely for purposes of the section 1441 regulations to treat the account holder as a government, an international organization, a foreign central bank of issue, or a resident of a U.S. territory. Thus, for example, a withholding agent may apply the exception provided in this paragraph (e)(2)(ii)(B)(*4*)(*iii*) with respect to an account holder claiming exemption under section 892 or otherwise identifying itself as a foreign government on a beneficial owner withholding certificate when the withholding agent may rely upon the claim of exemption under § 1.1441–8(b) or the claim of status as a foreign government under § 1.1441–7(b)(1) and (2).

(*5*) *Transition rules for the foreign TIN requirement for a beneficial owner withholding certificate signed before January 1, 2018*—(*i*) *Payments made before January 1, 2020.* For payments made before January 1, 2020, an otherwise valid beneficial owner withholding certificate signed before January 1, 2018, is not treated as invalid if it does not include a foreign TIN (or a reasonable explanation for its absence) as required under paragraph (e)(2)(ii)(B) of this section until the earlier of—

(A) the expiration date of the validity period of the withholding certificate (if applicable); or

(B) the date when a change in circumstances (including for chapter 4 purposes) requires a revised withholding certificate.

(*ii*) *Payments made after December 31, 2019.* For payments made after December 31, 2019, an otherwise valid beneficial owner withholding certificate signed before January 1, 2018, is not treated as invalid if it does not include a foreign TIN (or a reasonable explanation for its absence) as required under paragraph (e)(2)(ii)(B) of this section until the earlier of the date described in paragraph (e)(2)(ii)(B)(*5*)(*i*)(*A*) or (*B*) of this section, provided the withholding agent either—

(A) obtains from the account holder its foreign TIN (or reasonable explanation for its absence) on a written statement (including a written statement transmitted by email) which the withholding agent associates with the account holder's withholding certificate, or

(B) already has the account holder's foreign TIN in the withholding agent's files, which the withholding agent associates with the account holder's withholding certificate.

(*iii*) *Limitation on standard of knowledge.* If a withholding agent maintains an account on December 31, 2017, that is documented with a valid beneficial owner withholding certificate as of that date, the withholding agent's reason to know that the foreign TIN is incorrect, or actual knowledge that an account holder has a foreign TIN despite providing a reasonable explanation as described in paragraph (e)(2)(ii)(B)(*3*) of this section, is limited to electronically searchable information (as defined in § 1.1471–1(b)(38)) that is in the withholding agent's files.

(*6*) *Transition rule for the date of birth requirement for a beneficial owner withholding certificate signed before January 1, 2018.* For an otherwise valid beneficial owner withholding certificate signed before January 1, 2018, a withholding agent is not required to treat the withholding certificate as invalid for payments made before January 1, 2019, to an account holder solely because the withholding certificate does not include the account holder's date of birth and the date of birth is not in the withholding agent's files.

(3) * * *

(iv) * * *

(C) * * *

(*3*) *Alternative withholding statement*—(i) In lieu of a withholding statement containing all of the information described in paragraph (e)(3)(iv)(C)(*1*) and (*2*) of this section, a withholding agent may accept from a nonqualified intermediary a withholding statement that meets all of the requirements of this paragraph (e)(3)(iv)(C)(*3*)(*i*) with respect to a payment. The withholding statement described in this paragraph (e)(3)(iv)(C)(*3*)(*i*) may be provided only by a nonqualified intermediary that provides the withholding agent with the withholding certificates from the beneficial owners (that is, not documentary evidence) before the payment is made.

(*A*) The withholding statement is not required to contain all of the information specified in paragraphs (e)(3)(iv)(C)(*1*) and (*2*) of this section that is also included on a withholding certificate (for example, name, address, TIN (if any), chapter 4 status, GIIN (if any)). The withholding statement is also not required to specify the rate of withholding to which each foreign payee is subject, provided that all of the information necessary to make such determination is provided on the withholding certificate. A withholding agent that uses the withholding statement may not apply a different rate from that which the withholding agent may reasonably conclude from the information on the withholding certificate.

(*B*) The withholding statement must allocate the payment to every payee required to be reported as described in paragraph (e)(3)(iv)(C)(*1*)(*ii*) of this section.

(*C*) The withholding statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapters 3, 4, and 61, and section 3406.

(*D*) The withholding statement must contain a representation from the nonqualified intermediary that the information on the withholding certificates is not inconsistent with any other account information the nonqualified intermediary has for the beneficial owners for determining the rate of withholding with respect to each payee (applying the standards of knowledge applicable to a withholding agent's reliance on a withholding certificate in the regulations under section 1441 and, for a withholdable payment, the regulations under section 1471).

(*ii*) In lieu of a withholding statement that includes a recipient code for chapter 4 purposes used for filing Form 1042–S, a withholding agent may accept a nonqualified intermediary withholding statement that contains all of the information described in paragraph (e)(3)(iv)(C)(*1*) and (*2*) of this section (or an alternative withholding statement permitted under paragraph (e)(3)(iv)(C)(*3*)(i) of this section) but that does not provide a recipient code for chapter 4 purposes used for filing Form 1042–S for a payee as required in paragraph (e)(3)(iv)(C)(*2*)(*iv*) of this section if the withholding agent is able to determine such payee's recipient code based on other information included on or with the withholding statement or in the withholding agent's records with respect to the payee.

* * * * *

(4) * * *

(i) * * *

(B) *Electronic signatures.* A withholding agent, regardless of whether the withholding agent has established an electronic system pursuant to paragraph (e)(4)(iv)(A) or (e)(4)(iv)(C) of this section, may accept a withholding certificate with an electronic signature, provided the

electronic signature meets the requirements of paragraph (e)(4)(iv)(B)(*3*)(*ii*) of this section. In addition, the withholding certificate must reasonably demonstrate to the withholding agent that the form has been electronically signed by the recipient identified on the form (or a person authorized to sign for the recipient). For example, a withholding agent may treat as signed for purposes of the requirements for a valid withholding certificate, a withholding certificate that has in the signature block the name of the person authorized to sign, a time and date stamp, and a statement that the certificate has been electronically signed. However, a withholding agent may not treat a withholding certificate with a typed name in the signature line and no other information as signed for purposes of the requirements for a valid withholding certificate. A withholding agent may also rely upon, in addition to the contents of a withholding certificate, other documentation or information it has collected to support that a withholding certificate was electronically signed by the recipient identified on the form (or other person authorized to sign for the recipient), provided that the withholding agent does not have actual knowledge that the documentation or information is incorrect.

(ii) * * * (A) * * *

(*2*) *Documentary evidence for treaty claims and treaty statements.* Documentary evidence described in § 1.1441–6(c)(3) or (4) shall remain valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent, except as provided in paragraph (e)(4)(ii)(B) of this section. A statement regarding entitlement to treaty benefits described in § 1.1441–6(c)(5) (treaty statement) shall remain valid until the last day of the third calendar year following the year in which the treaty statement is provided to the withholding agent except as provided in this paragraph (e)(4)(ii)(A)(*2*). A treaty statement provided by an entity that identifies a limitation on benefits provision for a publicly traded corporation shall not expire at the time provided in the preceding sentence if a withholding agent determines, based on publicly available information at each time for which the treaty statement would otherwise be renewed, that the entity is publicly traded. Notwithstanding the second sentence of this paragraph (e)(4)(ii)(A)(*2*), a treaty statement provided by an entity that identifies a limitation on benefits provision for a government or tax-exempt organization (other than a tax-exempt pension trust or pension fund) shall remain valid indefinitely. Notwithstanding the validity periods (or exceptions thereto) prescribed in this paragraph (e)(4)(ii)(A)(*2*), a treaty statement will cease to be valid if a change in circumstances makes the information on the statement unreliable or incorrect. For accounts opened and treaty statements obtained prior to January 6, 2017 (including those from publicly traded corporations, governments, and tax-exempt organizations), the treaty statement will expire January 1, 2020.

* * * * *

(D) * * * (*1*) * * * However, see paragraph (e)(2)(ii)(B)(*1*) of this section for a special rule for a change of address for purposes of reliance on a foreign TIN (or a reasonable explanation for the absence of a foreign TIN) included on a beneficial owner withholding certificate.

* * * * *

(iv) * * *

(C) *Form 8233.* A withholding agent may establish a system for a beneficial owner or payee to provide Form 8233 electronically, provided the system meets the requirements of paragraph (e)(4)(iv)(B)(*1*) through (*4*) of this section (replacing ''Form W–8'' with ''Form 8233'' each place it appears).

* * * * *

(E) *Third party repositories.* A withholding certificate will be considered furnished for purposes of this section (including paragraph (e)(1)(ii)(A)(*1*) of this section) by the person providing the certificate, and a withholding agent may rely on an otherwise valid withholding certificate received electronically from a third party repository, if the withholding certificate was uploaded or provided to a third party repository and there are processes in place to ensure that the withholding certificate can be reliably associated with a specific request from the withholding agent and a specific authorization from the person providing the certificate (or an agent of the person providing the certificate) for the withholding agent making the request to receive the withholding certificate. For purposes of the preceding sentence, a withholding agent must be able to reliably associate each payment with a specific request and authorization except when the withholding agent is permitted to rely on the withholding certificate on an obligation-by-obligation basis or as otherwise permitted under paragraph (e)(4)(ix) of this section (treating the withholding certificate as obtained by the withholding agent and furnished by a customer for purposes of this paragraph (e)(4)(iv)(E)). A third party repository may also be used for withholding statements, and a withholding agent may also rely on an otherwise valid withholding statement, if the intermediary providing the withholding certificates and withholding statement through the repository provides an updated withholding statement in the event of any change in the information previously provided (for example, a change in the composition of a partnership or a change in the allocation of payments to the partners) and ensures there are processes in place to update withholding agents when there is a new withholding statement (and withholding certificates, as necessary) in the event of any change that would affect the validity of the prior withholding certificates or withholding statement. A third party repository, for purposes of this paragraph, is an entity that maintains withholding certificates (including certificates accompanied by withholding statements) but is not an agent of the applicable withholding agent or the person providing the certificate.

(F) *Examples.* This paragraph contains examples to illustrate the rules of paragraph (e)(4)(iv)(E) of this section.

(1) *Example 1.* A, a foreign corporation, completes a Form W–8BEN–E and a Form W–8ECI and uploads the forms to X, a third party repository (X is an entity that maintains withholding certificates on an electronic data aggregation site). WA, a withholding agent, enters into a contract with A under which it will make payments to A of U.S. source FDAP that are not effectively connected with A's conduct of a trade or business in the United States. X is not an agent of WA or A. Before receiving a payment, A sends WA an email with a link that authorizes WA to access A's Form W–8BEN–E on X's system. The link does not authorize WA to access A's Form W–8ECI. X's system meets the requirements of a third party repository, and WA can treat the Form W–8BEN–E as furnished by A.

(2) *Example 2.* The facts are the same as Example 1 of this paragraph (e)(4)(iv)(F), and WA and A enter into a second contract under which WA will make payments to A that are effectively connected with A's conduct of a trade or business in the United States. A sends WA an email with a link that gives WA access to A's Form W–8ECI on X's system. The link in this second email does not give WA access to A's Form W–8BEN–E. A's email also clearly indicates that the link is associated with payments received under the second contract. X's system meets the requirements of a third party repository, and WA can treat the Form W–8ECI as furnished by A.

(3) *Example 3.* FP is a foreign partnership that is acting on behalf of its partners, A and B, who are both foreign individuals. FP

completes a Form W–8IMY and uploads it to X, a third party repository. FP also uploads Forms W–8BEN from both A and B and a valid withholding statement allocating 50% of the payment to A and 50% to B. WA is a withholding agent that makes payments to FP as an intermediary for A and B. FP sends WA an email with a link to its Form W–8IMY on X's system. The link also provides WA access to FP's withholding statement and A's and B's Forms W–8BEN. FP also has processes in place that ensure it will provide a new withholding statement or withholding certificate to X's repository in the event of a change in the information previously provided that affects the validity of the withholding statement and that ensure it will update WA if there is a new withholding statement. X's system meets the requirements of a third party repository, and WA can treat the Form W–8IMY (and withholding statement) as furnished by FP. In addition, because FP is acting as an agent of A and B, the beneficial owners, WA can treat the Forms W–8BEN for A and B as furnished by A and B.

* * * * *

(f) * * * (1) *In general.* Except as otherwise provided in paragraphs (e)(2)(ii)(B), (e)(4)(iv)(D), (f)(2), and (f)(3) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014 (except for payments to which paragraph (e)(4)(iv)(D) applies, in which case, substitute March 5, 2014, for June 30, 2014), and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

* * * * *

(3) *Special rules related to section 871(m).* Paragraphs (b)(4)(xxi), (b)(4)(xxiii), (e)(3)(ii)(E), and (e)(6) of this section apply to payments made on or after September 18, 2015. Paragraphs (e)(5)(ii)(C) and (e)(5)(v)(B)(*4*) of this section apply to payments made on or after on January 19, 2017.

§ 1.1441–1T [Removed]

■ **Par. 4.** Section 1.1441–1T is removed.

■ **Par. 5.** Section 1.1441–2 is amended by revising paragraphs (a)(8) and (f) to read as follows:

§ 1.1441–2 Amounts subject to withholding.

(a) * * *

(8) Amounts of United States source gross transportation income, as defined in section 887(b)(1), that is taxable under section 887(a).

* * * * *

(f) *Effective/applicability date.* This section applies to payments made after December 31, 2000. Paragraph (a)(8) of this section applies to payments made on or after January 6, 2017; however, taxpayers may apply paragraph (a)(8) to any open tax year. Paragraphs (b)(5) and (d)(4) of this section apply to payments made after August 1, 2006. Paragraph (b)(6) of this section applies to payments made on or after January 23, 2012. Paragraph (e)(7) of this section applies to payments made on or after January 19, 2017.

§ 1.1441–2T [Removed]

■ **Par. 6.** Section 1.1441–2T is removed.

■ **Par. 7.** Section 1.1441–4 is amended by removing paragraph (h).

■ **Par. 8.** Section 1.1441–6 is amended by:

■ 1. Revising paragraphs (b)(1)(i) and (ii).

■ 2. Redesignating *Example 1* in paragraph (b)(2)(iv) as paragraph (b)(2)(iv)(A), *Example 2* in paragraph (b)(2)(iv) as paragraph (b)(2)(iv)(B), *Example 3* in paragraph (b)(2)(iv) as paragraph (b)(2)(iv)(C), and *Example 4* as paragraph (b)(2)(iv)(D).

■ 3. Revising paragraph (c)(5)(i).

■ 4. Revising the first sentence of paragraph (i)(1).

■ 5. Revising paragraph (i)(3).

The revisions and addition read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(b) * * *

(1) * * *

(i) *Identification of limitation on benefits provisions.* In conjunction with the representation that the beneficial owner meets the limitation on benefits provision of the applicable treaty, if any, required by paragraph (b)(1) of this section, a beneficial owner withholding certificate must also identify the specific limitation on benefits provision of the article (if any, or a similar provision) of the treaty upon which the beneficial owner relies to claim the treaty benefit. A withholding agent may rely on the beneficial owner's claim regarding its reliance on a specific limitation on benefits provision absent actual knowledge that such claim is unreliable or incorrect.

(ii) *Reason to know based on existence of treaty.* For purposes of this paragraph (b)(1), a withholding agent's reason to know that a beneficial owner's claim to a reduced rate of withholding under an income tax treaty is unreliable or incorrect includes a circumstance where the beneficial owner is claiming benefits under an income tax treaty that does not exist or is not in force. A withholding agent may determine whether a tax treaty is in existence and is in force by checking the list maintained on the IRS website at *https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z* (or any replacement page on the IRS website) or in the State Department's annual Treaties in Force publication.

(2) * * *

(iv) * * *

(D) *Example 4*—(i) *Facts.* Entity E is a business organization formed under the laws of Country Y. Country Y has an income tax treaty with the United States that contains a limitation on benefits provision. E receives U.S. source royalties from withholding agent W. E furnishes a beneficial owner withholding certificate to W claiming a reduced rate of withholding under the U.S.-Country Y tax treaty. However, E's beneficial owner withholding certificate does not specifically identify the limitation on benefits provision that E satisfies.

(ii) *Analysis.* Because E's withholding certificate does not specifically identify the limitation on benefits provision under the U.S.-Country Y tax treaty that E satisfies as required by paragraph (b)(1)(i) of this section, W cannot rely on E's withholding certificate to apply the reduced rate of withholding claimed by E.

* * * * *

(c) * * *

(5) * * *

(i) *Statement regarding conditions under a limitation on benefits provision.* In addition to the documentary evidence described in paragraph (c)(4)(ii) of this section, a taxpayer that is not an individual must provide a statement that it meets one or more of the conditions set forth in the limitation on benefits article (if any, or in a similar provision) contained in the applicable tax treaty and must identify the specific limitation on benefits provision of the article (if any, or a similar provision) of the treaty upon which the taxpayer relies to claim the treaty benefit. A withholding agent may rely on the taxpayer's claim on a treaty statement regarding its reliance on a specific limitation on benefits provision absent actual knowledge that such claim is unreliable or incorrect.

* * * * *

(i) * * * (1) *General rule.* Except as otherwise provided in paragraphs (i)(2) and (3) of this section, this section applies to payments made on or after January 6, 2017. * * *

* * * * *

(3) *Effective/applicability date.* Paragraphs (b)(1)(i) and (ii), (b)(2)(iv)(D), and (c)(5)(i) of this section apply to withholding certificates and treaty statements provided on or after January 6, 2017.

§ 1.1441–6T [Removed]

■ **Par. 9.** Section 1.1441–6T is removed.

■ **Par. 10.** Section 1.1441–7 is amended by adding a new third sentence in paragraph (b)(4)(i) and by revising paragraphs (b)(10)(iv) and (g) to read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

* * * * *

(b) * * *

(4) *Rules applicable to withholding certificates*—(i) *In general.* * * * See, however, § 1.1441–1(e)(2)(ii)(B) for additional reliance standards that apply to a withholding certificate that is required to include an account holder's foreign TIN. * * *

* * * * *

(10) * * *

* * * * *

(iv) If the beneficial owner is claiming a reduced rate of withholding under an income tax treaty, the rules of § 1.1441–6(b)(1)(ii) also apply to determine whether the withholding agent has reason to know that a claim for treaty benefits is unreliable or incorrect.

* * * * *

(g) *Effective/applicability date.* Except as otherwise provided in paragraph (a)(4) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

§ 1.1441–7T [Removed]

■ **Par. 11.** Section 1.1441–7T is removed.

■ **Par. 12.** Section 1.1471–0 is amended by adding entries for § 1.1471–3(c)(3)(iii)(B)(*5*), § 1.1471–4(d)(2)(ii)(G), and § 1.1474–1(d)(4)(vii) to read as follows:

§ 1.1471–0 Outline of regulation provisions for sections 1471 through 1474.

* * * * *

§ 1.1471–3 Identification of payee.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(B) * * *

(*5*) Nonqualified intermediary withholding statement.

* * * * *

§ 1.1471–4 FFI agreement.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(G) Combined reporting on Form 8966 following merger or bulk acquisition.

* * * * *

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

* * * * *

(d) * * *

(4) * * *

(vii) Combined Form 1042–S reporting.

* * * * *

■ **Par. 13.** Section 1.1471–1 is amended by revising paragraph (b)(99) to read as follows:

§ 1.1471–1 Scope of chapter 4 and definitions.

* * * * *

(b) * * *

(99) *Permanent residence address.* The term *permanent residence address* has the meaning set forth in § 1.1441–1(c)(38).

* * * * *

§ 1.1471–1T [Removed]

■ **Par. 14.** Section 1.1471–1T is removed.

■ **Par. 15.** Section 1.1471–3 is amended by:

■ 1. Revising paragraphs (c)(1) and (c)(3)(iii)(B)(*5*).

■ 2. Revising the third sentence of paragraph (c)(6)(ii)(E)(*3*).

■ 3. Revising paragraphs (c)(7)(ii) and (d)(6)(i)(F).

The revisions and addition read as follows:

§ 1.1471–3 Identification of payee.

* * * * *

(c) * * *

(1) *In general.* A withholding agent can reliably associate a withholdable payment with valid documentation if, before the payment, it has obtained (either directly from the payee or through its agent) valid documentation appropriate to the payee's chapter 4 status as described in paragraph (d) of this section, it can reliably determine how much of the payment relates to the valid documentation, and it does not know or have reason to know that any of the information, certifications, or statements in, or associated with, the documentation are unreliable or incorrect. Thus, a withholding agent cannot reliably associate a withholdable payment with valid documentation provided by a payee to the extent such documentation appears unreliable or incorrect with respect to the claims made, or to the extent that information required to allocate all or a portion of the payment to each payee is unreliable or incorrect. A withholding agent may rely on information and certifications contained in withholding certificates or other documentation without having to inquire into the truthfulness of the information or certifications, unless it knows or has reason to know that the information or certifications are untrue. A withholding agent may rely upon the same documentation for purposes of both chapters 3 and 4 provided the documentation is sufficient to meet the requirements of each chapter. Alternatively, a withholding agent may elect to rely upon the presumption rules of paragraph (f) of this section in lieu of obtaining documentation from the payee. A withholding certificate will be considered provided by a payee if a withholding agent obtains the certificate from a third party repository (rather than directly from the payee or through its agent) and the requirements in § 1.1441–1(e)(4)(iv)(E) are satisfied. A withholding certificate obtained from a third party repository must still be reviewed by the withholding agent in the same manner as any other documentation to determine whether it may be relied upon for chapter 4 purposes. A withholding agent may rely on an electronic signature on a withholding certificate if the requirements in § 1.1441–1(e)(4)(i)(B) are satisfied.

* * * * *

(3) * * *

(iii) * * *

(B) * * *

(*5*) *Nonqualified intermediary withholding statement.* A withholding agent that is making a withholdable payment to a nonqualified intermediary for which a withholding statement is required under chapters 3 or 4 may accept a withholding statement that meets the requirements described in § 1.1441–1(e)(3)(iv)(C)(*3*)(*i*) or (*ii*).

* * * * *

(6) * * *

(ii) * * *

(E) * * *

(*3*) *Withholding agent's obligation with respect to a change in circumstances.* * * * A withholding agent will have reason to know of a change in circumstances with respect to an FFI's chapter 4 status that results solely because the jurisdiction in which the FFI is resident, organized, or located ceases to be treated as having an IGA in effect on the date that the jurisdiction ceases to be treated as having an IGA in effect. * * *

(7) * * *

(ii) *Documentation received after the time of payment.* Proof that withholding was not required under the provisions of chapter 4 and the regulations thereunder also may be established after

the date of payment by the withholding agent on the basis of a valid withholding certificate and/or other appropriate documentation that was furnished after the date of payment but that was effective as of the date of payment. A withholding certificate furnished after the date of payment will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. A certificate obtained within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain an affidavit. However, in the case of a withholding certificate of an individual received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence described in paragraph (c)(5)(i) of this section that supports the individual's claim of foreign status. In the case of a withholding certificate of an entity received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence specified in paragraph (c)(5)(ii) of this section that supports the chapter 4 status claimed. If documentation other than a withholding certificate is submitted from a payee more than a year after the date of payment, the withholding agent will be required to also obtain from the payee a withholding certificate and affidavit supporting the chapter 4 status claimed as of the date of the payment. See, however, § 1.1441–1(b)(7)(ii) for special rules that apply when a withholding certificate is received after the date of the payment to claim that income is effectively connected with the conduct of a U.S. trade or business (as applied for purposes of this paragraph (c)(7)(ii) to a claim to establish that the payment is not a withholdable payment under § 1.1473–1(a)(4)(ii) rather than to claim an exemption described in § 1.1441–4(a)(1)).

* * * * *

(d) * * *

(6) * * *

(i) * * *

(F) The withholding agent does not know or have reason to know that the payee is a member of an expanded affiliated group with any FFI that is a depository institution, custodial institution, or specified insurance company, or that the FFI has any specified U.S. persons that own an equity interest in the FFI or a debt interest (other than a debt interest that is not a financial account or that has a balance or value not exceeding $50,000) in the FFI other than those identified on the FFI owner reporting statement described in paragraph (d)(6)(iv) of this section.

* * * * *

§ 1.1471–3T [Removed]

■ **Par. 16.** Section 1.1471–3T is removed.

■ **Par. 17.** Section 1.1471–4 is amended by revising paragraphs (c)(2)(ii)(B)(*2*)(*iii*), (d)(2)(ii)(G), (d)(4)(iv)(C), (d)(4)(iv)(D) introductory text, (d)(7) introductory text, and (j)(2) to read as follows:

§ 1.1471–4 FFI agreement.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) * * *

(*2*) * * *

(*iii*) In the case of a transferor FI that is a participating FFI or a registered deemed-compliant FFI (or a U.S. branch of either such entity that is not treated as a U.S. person) or that is a deemed-compliant FFI that applies the requisite due diligence rules of this paragraph (c) as a condition of its status, the transferor FI provides a written representation to the transferee FFI acquiring the accounts that the transferor FI has applied the due diligence procedures of this paragraph (c) with respect to the transferred accounts and, in the case of a transferor FI that is a participating FFI, has complied with the requirements of paragraph (f)(2) of this section; and

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(G) *Combined reporting on Form 8966 following merger or bulk acquisition.* If a participating FFI (successor) acquires accounts of another participating FFI (predecessor) in a merger or bulk acquisition of accounts, the successor may assume the predecessor's obligations to report the acquired accounts under paragraph (d) of this section with respect to the calendar year in which the merger or acquisition occurs (acquisition year), provided that the requirements in paragraphs (d)(2)(ii)(G)(*1*) through (*4*) of this section are satisfied. If the requirements of paragraphs (d)(2)(ii)(G)(*1*) through (*4*) of this section are not satisfied, both the predecessor and the successor are required to report the acquired accounts for the portion of the acquisition year that it maintains the account.

(*1*) The successor must acquire substantially all of the accounts maintained by the predecessor, or substantially all of the accounts maintained at a branch of the predecessor, in a merger or bulk acquisition of accounts for value.

(*2*) The successor must agree to report the acquired accounts for the acquisition year on Form 8966 to the extent required in § 1.1471–4(d)(3) or (d)(5).

(*3*) The successor may not elect to report under section 1471(c)(2) and § 1.1471–4(d)(5) with respect to any acquired account that is a U.S. account for the acquisition year.

(*4*) The successor must notify the IRS on the form and in the manner prescribed by the IRS that Form 8966 is being filed on a combined basis.

* * * * *

(4) * * *

(iv) * * *

(C) *Other accounts.* In the case of an account described in § 1.1471–5(b)(1)(iii) (relating to a debt or equity interest other than an interest as a partner in a partnership) or § 1.1471–5(b)(1)(iv) (relating to cash value insurance contracts and annuity contracts), the payments made during the calendar year with respect to such account are the gross amounts paid or credited to the account holder during the calendar year including payments in redemption (in whole or part) of the account. In the case of an account that is a partner's interest in a partnership, the payments made during the calendar year with respect to such account are the amount of the partner's distributive share of the partnership's income or loss for the calendar year, without regard to whether any such amount is distributed to the partner during the year, and any guaranteed payments for the use of capital. The payments required to be reported under this paragraph (d)(4)(iv)(C) with respect to a partner may be determined based on the partnership's tax returns or, if the tax returns are unavailable by the due date for filing Form 8966, the partnership's financial statements or any other reasonable method used by the partnership for calculating the partner's share of partnership income by such date.

(D) *Transfers and closings of deposit, custodial, insurance, and annuity financial accounts.* In the case of an account closed or transferred in its entirety during a calendar year that is a depository account, custodial account, or a cash value insurance contract or

annuity contract, the payments made with respect to the account shall be—

* * * * *

(7) *Special reporting rules with respect to the 2014 and 2015 calendar years*—

* * * * *

(j) * * *

(2) *Special applicability date.* Paragraph (d)(4)(iv)(C) of this section applies beginning with reporting with respect to calendar year 2017. (For rules that apply to reporting under paragraph (d)(4)(iv)(C) with respect to calendar years before 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

§ 1.1471–4T [Removed]

■ **Par. 18.** Section 1.1471–4T is removed.

■ **Par. 19.** Section 1.1474–1 is amended by revising paragraph (d)(4)(vii) to read as follows:

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

* * * * *

(d) * * *

(4) * * *

(vii) *Combined Form 1042–S reporting.* A withholding agent required to report on Form 1042–S under paragraph (d)(4) of this section (other than a nonparticipating FFI reporting under paragraph (d)(4)(v) of this section) may rely on the procedures used for chapter 3 purposes (provided in published guidance) for reporting on Form 1042–S (even if the withholding agent is not required to report under chapter 3) for combined reporting following a merger or acquisition, provided that all of the requirements for such reporting provided in the Instructions for Form 1042–S are satisfied.

* * * * *

§ 1.1474–1T [Removed]

■ **Par. 20.** Section 1.1474–1T is removed.

■ **Par. 21.** Section 1.6049–6 is amended by:

■ 1. Adding a sentence to the end of paragraph (e)(4).

■ 2. Revising the second sentence of paragraph (e)(5) and adding a new third sentence to paragraph (e)(5).

The additions and revision read as follows:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(e) * * *

(4) *Special rule for amounts described in § 1.6049–8(a).* * * * A person required by this paragraph (e)(4) to furnish a recipient copy of Form 1042–S may furnish such copy electronically by complying with the requirements provided in § 1.6050W–2(a)(2) through (5) applicable to statements required under section 6050W (substituting the phrase ''Form 1042–S'' for the phrases ''statement required under section 6050W'' or ''statements required by section 6050W(f)'' each place they appear).

(5) *Effective/applicability date.* * * * Paragraph (e)(4) of this section applies to payee statements reporting payments of deposit interest to nonresident alien individuals paid on or after January 2, 2020, but it may be applied to payments made on or after January 1, 2016. For payee statements reporting payments of deposit interest to nonresident alien individuals paid on or after January 1, 2013 and before January 2, 2020, see paragraph (e)(4) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2019. * * *

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: December 11, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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